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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Amendment of Section 2.106 of the )  
Commission's Rules to Allocate )  
Spectrum at 2 GHz for Use )  
by the Mobile-Satellite Service )

ET Docket No. 95-18

To: The Commission

**JOINT REPLY COMMENTS OF COSMOS BROADCASTING CORPORATION,  
COX BROADCASTING, INC., MEDIA GENERAL, INC. and  
RADIO-TELEVISION NEWS DIRECTORS ASSOCIATION**

Cosmos Broadcasting Corporation ("Cosmos"), Cox Broadcasting, Inc. ("Cox"), Media General, Inc. ("Media General"), each owners of several broadcast television stations,<sup>1/</sup> and the Radio-Television News Directors Association ("RTNDA"), the world's largest professional organization devoted exclusively to electronic journalism<sup>2/</sup> (collectively, the "Joint Commenters"), hereby submit reply comments pursuant to the Commission's *Memorandum Opinion and Order and Third Notice of Proposed Rule Making and Order* (Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service), ET Docket No. 95-18, FCC 98-309 (rel. Nov. 27, 1998) ("*Third Notice*"). In their comments in this proceeding, the Joint Commenters urged the Commission not to reduce further the spectrum allocated to the Broadcast Auxiliary Service ("BAS") and argued that the proposed BAS spectrum reallocation to 2025-2110 MHz would not serve the public interest. In the event the Commission determines that Congress permits it to reduce the BAS spectrum by another 20 MHz beyond the

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<sup>1/</sup> See Attachment.

<sup>2/</sup> RTNDA represents local and network news executives, educators, students and others in the radio, television and cable news businesses in over thirty countries.

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2025-2130 MHz allocation initially proposed, the Joint Commenters urged a phased-in transition of several years to preserve broadcasters' ability to continue to provide live coverage of events important to local communities.

**I. MSS OPERATORS FAIL TO SHOW THAT THE PROPOSED REALLOCATION IS IN THE PUBLIC INTEREST.**

The 1997 Balanced Budget Act directs the Commission to reallocate the 2110-2150 MHz band for assignment by auction unless the Commission determines that other spectrum better serves the public interest and greater auction receipts reasonably can be expected.<sup>3/</sup> The majority of MSS commenters, however, have not shown that the proposed reallocation would be in the public interest. The Joint Commenters plainly demonstrated in their initial comments that the public interest, convenience, and necessity would not be served by slashing the BAS spectrum. On the other hand, MSS operators either are silent or simply assert without support that the BAS reallocation "is fully adequate."<sup>4/</sup> The Wireless Communications Association International, Inc. ("WCA"), at least recognizing the Congressional criteria for reallocation, states that it "agrees with the Commission's conclusion, implicit in the [*Third Notice*], that there is no alternative"<sup>5/</sup> to the BAS reallocation but offers not the slightest reference to BAS to support the notion that the reallocation is "better." Pursuant to the 1997 Balanced Budget Act, the Commission is responsible for determining whether the proposed reallocation is in the public interest, but simply because the Commission is silent on the matter does not permit WCA to draw the Commission's conclusions

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<sup>3/</sup> 1997 Balanced Budget Act, Pub. L. No. 105-33 111 Stat. 251 §3002(c)(3)(B) (1997).

<sup>4/</sup> ICO Services Comments at 17.

<sup>5/</sup> WCA Comments at 3.

— especially when WCA fails to present any sort of comparative showing necessary to support its *own* conclusions.

In short, those in support of the reallocation provide the Commission with little basis for reaching a public interest conclusion in their favor. Accordingly, the Joint Commenters urge the Commission not to allocate the 2110-2130 MHz band for auction but to adopt the initially proposed BAS band of 2025-2130 MHz.<sup>6/</sup> The public interest requires that the Commission allocate alternate spectrum to prevent disenfranchising the millions of citizens who rely on BAS for live, local television coverage solely for the benefit of the few that can afford esoteric wireless services.

## **II. THE CONVERSION TO DIGITAL TELEVISION IS NO CURE-ALL.**

If the Commission concludes that the proposed reallocation is in the public interest, the reduction in BAS channel bandwidth to 12 MHz would create serious technical performance difficulties. As the Association of America's Public Television Stations ("APTS") notes, the narrower channel bandwidth will degrade the video signal and reduce coverage areas and path lengths.<sup>7/</sup> MSS operators, who have no experience in providing BAS, assert that this channel bandwidth is adequate because of broadcasters' mandated conversion to digital technology.<sup>8/</sup> Even assuming problems with the digital "cliff effect", digital processing latency, and digital video filtering are timely resolved (and that is doubtful), the conversion to DTV brings its own set of new requirements for broadcasters that weighs against hopes for BAS compression *ad infinitum*. An

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<sup>6/</sup> With MSS entrants reimbursing incumbent for relocation expenses.

<sup>7/</sup> APTS Comments at 1-4.

<sup>8/</sup> Constellation Communications ("Constellation") Comments at 3; ICO Services Comments at 17; Inmarsat Comments at 4.

informal survey of manufacturers by the Joint Commenters indicates that the proposed 12 MHz BAS channel bandwidth will not accommodate delivery of 1080i or 720p DTV formats. The necessary data rate to deliver HDTV BAS signals would require 64 QAM capability, but only 16 QAM is technically feasible.<sup>9/</sup> BAS delivery of the 480i and 480p SDTV formats on 12 MHz channels is not out of the question, but, as described in the initial comments, given the maturity of the technology, analog BAS operation may represent the only practicable means of delivering ENG signals for some time. Yet, as described by the Joint Commenters and APTS, analog operation at 12 MHz channel bandwidths is not an option.

**III. UNDER EITHER A PHASED-IN TRANSITION OR SIMULTANEOUS SWITCH-OVER, BAS LICENSEES WILL REQUIRE AT LEAST 4-6 YEARS TO EFFECTUATE THE CHANGE TO THE NEW SPECTRUM BAND.**

Many commenters disagreed with the Joint Commenters' belief that a carefully staged, phased-in transition would best balance the interests of all parties by permitting digital technology to mature and evolve while allowing MSS operators to initiate a deliberate roll-out. Those commenters instead supported the Commission's tentative conclusion that a nationwide simultaneous replacement of all BAS equipment is preferable.<sup>10/</sup> The Joint Commenters acknowledge the difficulties posed by a phased-in transition but continue to believe that an opportunity exists to provide MSS operators the benefit of a limited, early service roll-out while waiting for sufficient maturation of digital BAS equipment. For example, in light of the incapability to deliver HDTV signals on BAS equipment and the inadequacy of analog operation at

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<sup>9/</sup> 64 QAM will not work in the field, especially for non-engineered microwave path applications such as ENG links.

<sup>10/</sup> APTS Comments at 6; Society of Broadcast Engineers ("SBE") Comments at 3-4; Iridium Comments at 2; Globalstar Comments at 4.

a 12 MHz channel bandwidth, in the four to six years before many MSS operators could commence service,<sup>11/</sup> digital BAS equipment likely will mature to a level that would permit a more meaningful evaluation. The current BAS Channel 2 (2008-2025 MHz) could be retained until some future date when MSS operators can document that the public demand for their limited service is adequate to justify the loss of vital BAS spectrum.

Nonetheless, if the Commission ultimately concludes that a simultaneous switch to the proposed band is necessary, it is uncontroverted that BAS licensees will require several years to have equipment in place. New equipment would have to be installed in advance at numerous sites throughout the nation and in a manner that would minimize down-time when the switch takes place. BAS licensees would have to install either analog/digital compatible equipment with programmable channel frequencies to allow the instantaneous change or separate digital equipment in parallel with existing analog equipment before the switch. To ensure mature technology and avoid lock-in problems, BAS licensees would have to wait before ordering and installing equipment. The time allotted until the switch-over date also must account for the limited capacity of BAS equipment manufacturers and tower and installation crews. Furthermore, contrary to suggestions to the otherwise,<sup>12/</sup> a seamless transition would not permit the shipment of existing BAS equipment to manufacturers to be modified for operation under the new band — even if such manufacturer capacity existed. Under that scenario, BAS licensees still would require a second set of equipment to continue their operations while the equipment is at the manufacturer and that would result in excessive and redundant reimbursement costs for MSS operators.

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<sup>11/</sup> Constellation Comments at 4. Iridium admits as much in its proposed framework. Iridium Comments at 2.

<sup>12/</sup> See, e.g., Constellation Comments at 6-7.

Either a phased-in or a simultaneous transition would require careful planning to protect the interests of incumbent BAS licensees and the citizens who rely upon their services. To that extent, the Joint Commenters agree with SBE's comments suggesting that if MSS operators are unable to fund the costs initiating this transition in a manner that preserves BAS, then the Commission should not proceed down this reallocation path.<sup>13/</sup>

#### **IV. RELOCATED INCUMBENT BAS LICENSEES SHOULD NOT BE REQUIRED TO SUBSIDIZE NEW MSS OPERATIONS.**

The Joint Commenters support the Commission's reaffirmation that MSS licensees must compensate broadcasters for relocation of their vital BAS operations<sup>14/</sup> and agree with the proposed application of the principles developed in the *Emerging Technologies* proceeding.<sup>15/</sup> New MSS entrants seeking to use occupied BAS spectrum must reimburse BAS licensees for any costs incurred in relocating their operations.

Because the proposed reallocation would require re-channelizing the entire BAS band, the Commission should make clear that MSS entrants must reimburse BAS licensees for all equipment operating on the BAS channel — and not just BAS Channels 1 and 2. BAS licensees are authorized for use of the entire band. Although licensees in some communities have local coordination agreements designating specific channel use (*i.e.*, channels other than 1 and 2), the

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<sup>13/</sup> SBE Comments at 4.

<sup>14/</sup> *Third Notice* at ¶41.

<sup>15/</sup> *Id.* at ¶¶ 6, 16. See *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies* ("Emerging Technologies"), ET Docket No. 92-9, *First Report and Order and Third Notice of Proposed Rule Making*, 7 FCC Rcd 6886 (1992); *Second Report and Order*, 8 FCC Rcd 6495 (1993); *Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd 6589 (1993); *Memorandum Opinion and Order*, 9 FCC Rcd 1943 (1994); *Second Memorandum Opinion and Order*, 9 FCC Rcd 7797 (1994), *aff'd*, *Association of Public Safety Communications Officials-International, Inc. v. FCC*, (APCO v. FCC), 76 F. 3d 395 (D.C. Cir. 1996).

new bandwidth and channel assignments will necessitate replacing *all* BAS equipment.

Accordingly, the Commission's *Emerging Technologies* policy requires MSS operators to reimburse incumbent BAS licensees for all new equipment that would be required as a result of the reallocation.

The Joint Commenters agree with MSTV and NAB that, consistent with the *Emerging Technologies* procedures and as indicated in the *Third Notice*, the Commission must require reimbursement for *comparable* facilities.<sup>16/</sup> Accordingly, relocation expenses should include all actual costs BAS operators incur in replacing the BAS equipment rendered obsolete by the MSS entrants. In addition to the equipment list price, the relocation costs must include sales tax (typically 5-7%), shipping (5-10%), FCC and legal (4-6%), engineering (3-5%), and installation (5-20%) — reflecting a full reimbursement of the equipment price plus 22-48%. The suggestion by ICO Services that BAS licensees be reimbursed only for the depreciated value of obsolete equipment is inconsistent with any reasonable standard for “comparable facilities” and therefore must be rejected.<sup>17/</sup> Displaced BAS licensees should be reimbursed for their actual relocation expenses and not be required to subsidize the roll-out costs of MSS auction winners.

### **Conclusion**

The Joint Commenters again urge the Commission to preserve live, local television coverage of news, press conferences, political events, and sports, and retain the initially proposed BAS spectrum allocation of 2025-2130 MHz. BAS is viewers' link to local news coverage. MSS commenters have failed to respond to the Congressional criteria for this reallocation.

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<sup>16/</sup> MSTV and NAB Comments at 4-5; *Third Notice* at ¶16.

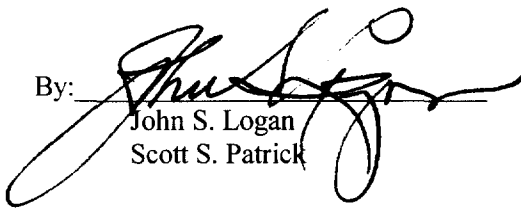
<sup>17/</sup> ICO Services Comments at 14-15.

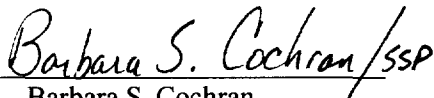
If the BAS spectrum is reallocated, the Commission must ensure that the adopted form of transition accounts for maturing technology and avoids locking BAS licensees into equipment as obsolete as that being replaced.

Respectfully submitted,

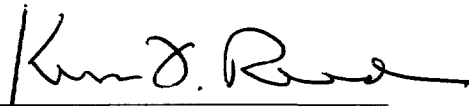
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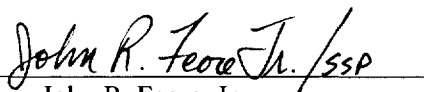
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Dated: March 5, 1999



## **ATTACHMENT**

Either directly or through subsidiaries, Cosmos, Cox and Media General own and operate television stations across the United States. Cosmos is the licensee of the following television stations: WIS-TV (Columbia, South Carolina), WSFA-TV (Montgomery, Alabama), WTOL-TV (Toledo, Ohio), KPLC-TV (Lake Charles, Louisiana), KAIT-TV (Jonesboro, Arkansas), WAVE-TV (Louisville, Kentucky), WFIE-TV (Evansville, Indiana), WLOX-TV (Biloxi, Mississippi), WALB-TV (Albany, Georgia), KGBT-TV (Harlingen, Texas) and WWAY-TV (Wilmington, North Carolina).

Cox, either directly or through subsidiaries, is the licensee of the following television stations: WSB-TV, Atlanta, Georgia, WFTV(TV), Orlando, Florida, WPXI(TV), Pittsburgh, Pennsylvania, WSOC-TV, Charlotte, North Carolina, KIRO-TV, Seattle, Washington, KFOX-TV, El Paso, Texas, KTVU(TV), Oakland, California, KRXI(TV), Reno, Nevada and WHIO-TV, Dayton, Ohio.

Media General, through subsidiaries, is the licensee of the following television stations: WNCT-TV (Greenville, North Carolina), WSLS-TV (Roanoke, Virginia), WJHL-TV (Johnson City, Tennessee), WDEF-TV (Chattanooga, Tennessee), WTVQ-TV (Lexington, Kentucky), KALB-TV (Alexandria, Louisiana), WCBF-TV (Charleston, South Carolina), WJWB(TV) (Jacksonville, Florida), WFLA-TV (Tampa, Florida), WSAV-TV (Savannah, Georgia), WJTV(TV) (Jackson, Mississippi) and WHLT(TV) (Hattiesburg, Mississippi).